

AN AGREEMENT BETWEEN THE GOVERNMENT OF
THE UNITED STATES AND THE GOVERNMENT OF
THE REPUBLIC OF KOREA CONCERNING FISHERIES
OFF THE COASTS OF THE UNITED STATES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AN EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE
UNITED STATES AND THE GOVERNMENT OF THE REPUBLIC OF
KOREA CONCERNING FISHERIES OFF THE COASTS OF THE
UNITED STATES, PURSUANT TO 16 U.S.C. 1823(a)



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Committee on Merchant Marine and Fisheries and ordered to be printed

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To the Congress of the United States:

In accordance with the Magnuson Fishery Conservation and Management Act of 1976 (Public Law 94-265; 16 U.S.C. 1801 *et seq.*), I transmit herewith an agreement effected by exchange of notes February 17, 1989, and March 27, 1989, extending for the period of 2 years from July 1, 1989, until July 1, 1991, the Agreement between the Government of the United States of America and the Government of the Republic of Korea Concerning Fisheries off the Coasts of the United States, signed at Washington on July 26, 1982, as amended and extended. The exchange of notes together with the present agreement constitute a governing international fishery agreement within the meaning of section 201(c) of the act.

Several U.S. fishing industry interests have urged prompt consideration of this agreement. Because of the importance of our fishing relationship with Korea, I urge the Congress to give favorable consideration to this agreement at an early date.

Since 60 calendar days of continuous session, as required by the legislation, may not be available before the current agreement is scheduled to expire, I recommend the Congress consider passage of a joint resolution.

GEORGE BUSH.

THE WHITE HOUSE, *May 1, 1989.*



AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE REPUBLIC OF KOREA
CONCERNING FISHERIES OFF THE COASTS
OF THE UNITED STATES

The Government of the United States and the Government of the Republic of Korea,

Considering their common concern for the rational management, conservation and achievement of optimum yield of fish stocks off the coasts of the United States;

Recognizing that the United States has established a fishery conservation zone within 200 nautical miles of its coasts within which the United States exercises exclusive fishery management authority over all fish and that the United States also exercises such authority over the living resources of the continental shelf appertaining to the United States and to anadromous species of fish of United States origin;

Recognizing that the Republic of Korea is heavily dependent on fish as a major source of animal protein for the fulfillment of the nutritional needs of its population;

Recognizing that the two Governments have closely cooperated with each other in the development of mutual fisheries relations within the framework of the 1977 Agreement Between the Government of the United States and the Government of the Republic of Korea Concerning Fisheries off the Coasts of the United States;

Taking into account international law relating to oceans and fisheries; and

Desirous of establishing reasonable terms and conditions pertaining to fisheries of mutual concern over which the United States exercises exclusive fishery management authority;

Have agreed as follows:

ARTICLE I

The purpose of this Agreement is to promote effective conservation, rational management and the achievement of optimum yield in the fisheries of mutual interest off the coasts of the United States and to establish a common understanding of the principles and procedures under which fishing may be conducted by nationals and vessels of the Republic of Korea for the living resources over which the United States exercises exclusive fishery management authority as provided by United States law.

ARTICLE II

As used in this Agreement, the term

1. "living resources over which the United States exercises exclusive fishery management authority" means all fish within the fishery conservation zone of the United States, (except highly migratory species), all anadromous species of fish that spawn in

the fresh or estuarine waters of the United States and migrate to ocean waters while present in the United States fishery conservation zone and in areas beyond national fisheries jurisdictions recognized by the United States and all living resources of the continental shelf appertaining to the United States;

2. "fish" means all finfish, molluscs, crustaceans, and other forms of marine animal and plant life, other than marine mammals, birds and highly migratory species;

3. "fishery" means

- a. one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and
- b. any fishing for such stocks;

4. "fishery conservation zone" means a zone contiguous to the territorial sea of the United States, the seaward boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the breadth of the territorial sea of the United States is measured;

5. "fishing" means

- a. the catching, taking or harvesting of fish;
- b. the attempted catching, taking or harvesting of fish;
- c. any other activity that can reasonably be expected to result in the catching, taking or harvesting of fish;

d. any operations at sea, including processing, directly in support of, or in preparation for, any activity described in subparagraphs a. through c. above, provided that such term does not include other legitimate uses of the high seas, including any scientific research activity;

6. "fishing vessel" means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for

a. fishing; or

b. aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including preparation, supply, storage, refrigeration, transportation or processing;

7. "highly migratory species" means species of tuna which in the course of their life cycle, spawn and migrate over great distances in waters of the ocean; and

8. "marine mammal" means any mammal that is morphologically adapted to the marine environment, including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea, or primarily inhabits the marine environment such as polar bears.

ARTICLE III

1. The Government of the United States is willing to allow access for vessels of the Republic of Korea to harvest, in accordance

with terms and conditions to be established in permits issued under Article VII, the Republic of Korea portion of the total allowable catch for a specific fishery that will not be harvested by United States fishing vessels and is determined to be available to foreign fishing vessels in accordance with United States law.

2. The Government of the United States shall determine each year, subject to such adjustments as may be necessitated by unforeseen circumstances affecting the stocks, and in accordance with United States law,

- a. the total allowable catch for each fishery based on optimum yield, taking into account the best available scientific evidence, and social, economic and other relevant factors;
- b. the harvesting capacity of United States fishing vessels in respect of each fishery;
- c. the portion of the total allowable catch for a specific fishery to which access will be provided, on a periodic basis each year, to foreign fishing vessels;
and
- d. the allocation of such portion that may be made available to the Republic of Korea for its qualifying fishing vessels.

3. In implementation of paragraph 2.d. of this Article, the United States shall determine each year the measures necessary to

prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery in accordance with United States law.

4. The Government of the United States shall notify the Government of the Republic of Korea of the determinations provided for by this Article on a timely basis.

ARTICLE IV

In determining the portion of the surplus that may be made available to vessels of each country, including the Republic of Korea, the Government of the United States will decide on the basis of the factors identified in United States law including:

1. whether, and to what extent, such nations impose tariff barriers or nontariff barriers on the importation, or otherwise restrict the market access, of United States fish or fishery products;

2. whether, and to what extent such nations are cooperating with the United States in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen;

3. whether, and to what extent, such nations and the fishing fleets of such nations have cooperated with the United States in the enforcement of United States fishing regulations;

4. whether, and to what extent, such nations require the fish harvested from the fishery conservation zone for their domestic consumption;

5. whether, and to what extent, such nations otherwise contribute to, or foster the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

6. whether, and to what extent, the fishing vessels of such nations have traditionally engaged in fishing in such fishery;

7. whether, and to what extent, such nations are cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and

8. such other matters as the United States deems appropriate.

ARTICLE V

The Government of the Republic of Korea shall cooperate with and assist the United States in the development of the United States fishing industry and the increase of United States fishery exports by taking such measures as reducing or removing impediments to the importation and sale of United States fishery products, providing information concerning technical and administrative requirements for access of United States fishery products into the

Republic of Korea, providing economic data, sharing expertise, facilitating the transfer of harvesting or processing technology to the United States fishing industry, facilitating appropriate joint venture and other arrangements, informing its industry of trade and joint venture opportunities with the United States, and taking such other actions as may be appropriate.

ARTICLE VI

The Government of the Republic of Korea shall take all necessary measures to insure:

1. that nationals and vessels of the Republic of Korea refrain from fishing for living resources over which the United States exercises exclusive fishery management authority except as authorized pursuant to this Agreement;
2. that all such vessels so authorized comply with the provisions of permits issued pursuant to this Agreement and applicable laws of the United States; and
3. that the total allocation referred to in Article III, paragraph 2.d. of this Agreement is not exceeded for any fishery.

ARTICLE VII

The Government of the Republic of Korea may submit an application to the Government of the United States for a permit for each

fishing vessel of the Republic of Korea that wishes to engage in fishing in the fishery conservation zone pursuant to this Agreement. Such application shall be prepared and processed in accordance with Annex I, which constitutes an integral part of this Agreement. The Government of the United States may require the payment of fees for such permits and for fishing in the United States fisheries zone. The Government of the Republic of Korea undertakes to keep the number of applications to the minimum required, in order to aid in the efficient administration of the permit program.

ARTICLE VIII

The Government of the Republic of Korea shall insure that nationals and vessels of the Republic of Korea refrain from harassing, hunting, capturing or killing, or attempting to harass, hunt, capture or kill, any marine mammal within the United States fishery conservation zone, except as may be otherwise provided by an international agreement respecting marine mammals to which the United States is a party, or in accordance with specific authorization for and controls on incidental taking of marine mammals established by the Government of the United States.

ARTICLE IX

The Government of the Republic of Korea shall insure that in the conduct of the fisheries under this Agreement:

1. the authorizing permit for each vessel of the Republic of Korea is prominently displayed in the wheelhouse of such vessel;

2. appropriate position-fixing and identification equipment, as determined by the Government of the United States, is installed and maintained in working order on each vessel;

3. designated United States observers are permitted to board, upon request, any such fishing vessel, and shall be accorded the courtesies and accommodations provided to ship's officers while aboard such vessel, and owners, operators and crews of such vessel shall cooperate with observers in the conduct of their official duties, and, further, the Government of the United States shall be reimbursed for the costs incurred in the utilization of observers;

4. agents are appointed and maintained within the United States possessing the authority to receive and respond to any legal process issued in the United States with respect to an owner or operator of a vessel of the Republic of Korea for any cause arising out of the conduct of fishing activities for the living resources over which the United States exercises exclusive fishery management authority; and

5. all necessary measures are taken to minimize fishing gear conflicts and to insure the prompt and adequate compensation of United States citizens for any loss, or damage to, their fishing vessels, fishing gear or catch, and resultant economic loss,

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that is caused by any fishing vessel of the Republic of Korea as determined by applicable United States procedures.

ARTICLE X

The Government of the Republic of Korea shall take all appropriate measures to assist the United States in the enforcement of its laws pertaining to fishing in the fishery conservation zone and to insure that each vessel of the Republic of Korea that engages in fishing for living resources subject to the exclusive fishery management authority of the United States shall allow and assist the boarding and inspection of such vessel by any duly authorized enforcement officer of the United States and shall cooperate in such enforcement action as may be undertaken pursuant to the laws of the United States.

ARTICLE XI

1. The Government of the United States will impose appropriate penalties, in accordance with the laws of the United States, on vessels of the Republic of Korea or their owners or operators, that violate the requirements of this Agreement or of any permit issued hereunder.

2. Arrested vessels and their crews shall be promptly released, subject to such reasonable bond or other security as may be determined by the court.

3. The representatives of the Government of the United States shall generally recommend to the court in any case arising out of fishing activities under this Agreement that the penalty for violation of fishery regulations not include imprisonment.

4. In cases of seizure and arrest of a vessel of the Republic of Korea by the authorities of the Government of the United States, notification shall be given promptly through diplomatic channels informing the Government of the Republic of Korea of the action taken and of any penalties subsequently imposed.

ARTICLE XII

1. The Governments of the Republic of Korea and the United States shall cooperate in the conduct of scientific research required for the purpose of managing and conserving living resources subject to the exclusive fishery management authority of the United States, including the compilation of the best available scientific information for management and conservation of stocks of mutual interest.

2. The competent agencies of the two Governments shall cooperate in the development of a periodic research plan on stocks of mutual concern through correspondence or meetings as appropriate, and may modify it from time to time by agreement. The agreed research plans may include, but are not limited to, the exchange of

information and scientists, regularly scheduled meetings between scientists to prepare research plans and review progress, and jointly conducted research projects.

3. The conduct of agreed research during regular commercial fishing operations on board a fishing vessel of the Republic of Korea in the United States fishery conservation zone shall not be deemed to change the character of the vessel's activities from fishing to scientific research. Therefore, it will still be necessary to obtain a permit for the vessel in accordance with Article VII.

4. The Government of the Republic of Korea shall cooperate with the Government of the United States in the implementation of procedures for collecting and reporting biostatistical information and fisheries data, including catch and effort statistics, in accordance with procedures which will be stipulated by the United States.

ARTICLE XIII

The Government of the Republic of Korea and the Government of the United States shall carry out periodic bilateral consultations regarding the implementation of this Agreement and the development of further cooperation in the field of fisheries of mutual concern,

including the participation in the appropriate multilateral organizations for the collection and analysis of scientific data respecting such fisheries.

ARTICLE XIV

Should the Government of the United States indicate to the Government of the Republic of Korea that nationals and vessels of the United States wish to engage in fishing in the fishery conservation zone of the Republic of Korea, or its equivalent, the Government of the Republic of Korea will allow such fishing on the basis of reciprocity and on terms not more restrictive than those established in accordance with this Agreement.

ARTICLE XV

Nothing contained in the present Agreement shall prejudice the views of either Government with respect to the territorial or other jurisdiction of the coastal State for all purposes other than the conservation and management of fisheries.

ARTICLE XVI

1. This Agreement shall enter into force on a date to be agreed upon by exchange of notes, following the completion of internal procedures of both Governments, and remain in force until

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July 1, 1987, unless extended by exchange of notes between the Parties. Notwithstanding the foregoing, either Party may terminate this Agreement after giving written notice of such termination to the other Party twelve months in advance.

2. This Agreement shall be subject to review by the two Governments two years after its entry into force at the request of either or upon the conclusion of a multilateral treaty resulting from the Third United Nations Conference on the Law of the Sea.

IN WITNESS WHEREOF, the undersigned, being duly authorized for this purpose, have signed this Agreement.

DONE at Washington, *July 26, 1982*, in the English and Korean languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE
REPUBLIC OF KOREA:

James L. Malone *B. H. Lee*

ANNEX I

Application and Permit Procedures

The following procedures shall govern the application for and issuance of annual permits authorizing vessels of the Republic of Korea to engage in fishing for living resources over which the United States exercises exclusive fishery management authority:

1. The Government of the Republic of Korea may submit an application to the competent authorities of the United States for each fishing vessel of the Republic of Korea that wishes to engage in fishing pursuant to this Agreement. Such application shall be made on forms provided by the Government of the United States for that purpose.

2. Any such application shall specify

- a. the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner and operator thereof;
- b. the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other information relating to the fishing characteristics of the vessel as may be requested;
- c. a specification of each fishery in which each vessel wishes to fish;

- d. the amount of fish or tonnage of catch by species contemplated for each vessel during the time such permit is in force;
- e. the ocean area in which, and the season or period during which, such fishing would be conducted; and
- f. such other relevant information as may be requested, including desired transshipping areas.

3. The Government of the United States shall review each application, shall determine what conditions and restrictions may be needed, and what fee will be required, and shall inform the Government of the Republic of Korea of such determinations. The Government of the United States reserves the right not to approve applications.

4. The Government of the Republic of Korea shall thereupon notify the Government of the United States of its acceptance or rejection of such conditions and restrictions and, in the case of a rejection, of its objections thereto.

5. Upon acceptance of the conditions and restrictions by the Government of the Republic of Korea and the payment of any fees, the Government of the United States shall approve the application and issue a permit for each Republic of Korea fishing vessel, which fishing vessel shall thereupon be authorized to fish in accordance with this Agreement and the terms and conditions set forth in the permit. Such permits shall be issued for a specific vessel and shall not be transferred.

6. In the event the Government of the Republic of Korea notifies the Government of the United States of its objections to specific conditions and restrictions, the two sides may consult with respect thereto and the Government of the Republic of Korea may thereupon submit a revised application.

7. The procedures in this Annex may be amended by agreement through an exchange of notes between the two Governments.

ANNEX II
CONSERVATION AND MANAGEMENT MEASURES

With respect to Article III (3), the United States shall determine each year the measures necessary to prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery in accordance with United States law. Such measures may include, inter alia:

- a. designated areas where, and periods when, fishing shall be permitted, limited, or conducted only by specified types of fishing vessels or with specified types and quantities of fishing gear;
- b. limitations on the catch of fish based on area, species, size, number, weight, sex, incidental catch, total biomass or other factors;
- c. limitations on the number and types of fishing vessels that may engage in fishing and/or on the number of days

- each vessel of the total fleet may engage in a designated area for a specified fishery;
- d. requirements as to the types of gear that may, or may not, be employed; and
 - e. requirements designed to facilitate enforcement of such conditions and restrictions, including the maintenance of appropriate position-fixing and identification equipment.

AGREED MINUTES

1. The representative of the Government of the United States and the representative of the Government of the Republic of Korea acknowledge the advantages to their respective industries of providing stability of expectations in fishery relations, including fishery allocations, fisheries development, and fisheries trade, over reasonable periods of time.

2. The representative of the Government of the Republic of Korea stated that, with reference to Article V, the Government of the Republic of Korea would necessarily give appropriate consideration to its other international commitments. The representative of the Government of the United States expressed his appreciation for past efforts of the Government of the Republic of Korea in encouraging exports of United States fishery products and looked forward to continued cooperation in this area.

3. With respect to Article IX (5) of the Agreement, the representative of the Government of the Republic of Korea expressed concern that prompt and adequate compensation be provided to nationals of the Republic of Korea for any loss of, or damage to, their fishing vessels, fishing gear or catch that is caused by any fishing vessel of the United States. The representative of the Government of the United States stated that such remedies are available to nationals of the Republic of Korea through the laws and judicial procedures of the United States.

4. In connection with Article X of the Agreement, the representative of the Government of the United States noted the request of the Government of the Republic of Korea that in carrying out their responsibilities under United States law, United States officials would take only such actions as are necessary to fulfill their obligations under such laws and regulations, paying due regard to the economic loss such action may inflict on vessels of the Republic of Korea in operation.

5. The representative of the Government of the United States noted that the commitment in Article XI (3) to recommend that imprisonment not be imposed as a penalty for violation of fishery regulations does not apply in the case of enforcement related offenses such as assault on an enforcement officer or refusal to permit boarding and inspection.

6. The representative of the United States stated that, with respect to Annex 1 paragraph 3, it was his expectation that this provision would normally be applied in the case of vessels which had a record of law enforcement violations.

7. The representative of the Government of the United States and the representative of the Government of the Republic of Korea noted that they would cooperate in the exchange of scientific and technical information relating to species of tuna of mutual interest with a view to the establishment of regional arrangements, including appropriate international organizations, to ensure

conservation of the species. Such scientific exchanges would also include the reporting of tuna and associated catches. The two representatives further noted that, commencing with the effective date of the Agreement and until such time as appropriate regional arrangements are in place, the Government of the Republic of Korea would, in order to establish a base of scientific information to further such arrangements, provide to the appropriate United States authorities, statistics on tuna and associated catches off the coasts of the United States.

8. The representative of the Government of the United States stated that, subject to the applicable laws and regulations of the United States, fishing vessels of the Republic of Korea could enter United States ports for the purpose of obtaining supplies and services normally available in those ports.

EMBASSY OF THE REPUBLIC OF KOREA
WASHINGTON, D. C.

KAM 89/042

The Embassy of the Republic of Korea presents its compliments to the Department of State of the United States of America and has the honor to acknowledge the receipt of the latter's Note dated February 17, 1989, which reads as follows:

"The Department of State wishes to draw to the attention of the Embassy of the Republic of Korea the Agreement between the Government of the United States of America and the Government of the Republic of Korea Concerning Fisheries Off the Coasts of the United States, signed at Washington on July 26, 1982, as amended and extended by an exchange of notes at Seoul on May 11 and 20, 1987, which will expire on July 1, 1989, by its own terms.

The Government of the United States of America proposes that the Agreement be extended from July 1, 1989 to July 1, 1991.

If this proposal is acceptable to the Government of the Republic of Korea, it is proposed that this note and the Embassy's note in reply thereto shall constitute an agreement between the two Governments extending the Agreement between the Government of the United States of America and the Government of

the Republic of Korea Concerning Fisheries Off the Coasts of the United States, as amended. This agreement shall enter into force following written confirmation of the completion of the two countries' internal procedures and shall be effective from July 1, 1989."

The Embassy of the Republic of Korea has the honor to inform the Department of State that the foregoing proposal is acceptable to the Government of the Republic of Korea and to confirm that the latter's Note and this Note in reply thereto shall constitute an agreement between the two Governments, extending until July 1, 1991 the agreement between the Government of the Republic of Korea and the Government of the United States of America Concerning Fisheries Off the Coasts of the United States signed at Washington on July 26, 1982, as amended and extended by an exchange of notes in Seoul on May 11, and 20, 1987.

The Embassy has the further honor to notify that the Korean Government has completed its internal procedures. This agreement shall enter into force following written confirmation of the completion of the United States' internal procedures.

The Embassy of the Republic of Korea avails itself of this opportunity to renew to the Department of State of the United States of America the assurances of its highest consideration.

Washington, D.C.

March 27, 1989



The Department of State wishes to draw to the attention of the Embassy of the Republic of Korea the Agreement between the Government of the United States of America and the Government of the Republic of Korea Concerning Fisheries off the Coasts of the United States, signed at Washington on July 26, 1982, as amended and extended by an exchange of notes at Seoul on May 11 and 20, 1987, which will expire on July 1, 1989, by its own terms.

The Government of the United States of America proposes that the Agreement be extended from July 1, 1989 to July 1, 1991.

If this proposal is acceptable to the Government of the Republic of Korea, it is proposed that this note and the Embassy's note in reply thereto shall constitute an agreement between the two Governments extending the Agreement between the Government of the United States of America and the Government of the Republic of Korea Concerning Fisheries Off the Coasts of the United States, as amended. This agreement shall enter into force following written confirmation of the completion of the two countries' internal procedures and shall be effective from July 1, 1989.

Department of State,

Washington, February 17, 1989.